

EXHIBIT 20

GARY FRIEDMAN

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)
) Chapter 11
OWENS-CORNING, ET AL.,) Case No. 00-03837 (JFK)
)
) Jointly Administered
Debtors.)
)

VIDEOTAPED DEPOSITION OF

DR. GARY FRIEDMAN

DECEMBER 14, 2004

VOLUME 1

ORAL DEPOSITION OF DR. GARY FRIEDMAN, produced as
a witness at the instance of Credit Suisse First
Boston, as Agent for the prepetition institutional
lenders to the Debtor, and duly sworn, was taken in
the above-styled and numbered cause on the 14th of
December, 2004, from 8:40 AM to 5:00 PM, before
Cinnamon Boyle, CSR in and for the State of Texas,
reported by machine shorthand, at the offices of Weil,
Gotshal & Manges, 700 Louisiana, Suite 1600, Houston,
Texas, pursuant to the Federal Rules of Civil
Procedure.

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1 A P P E A R A N C E S
2 FOR CREDIT SUISSE FIRST BOSTON, AS AGENT FOR THE
3 PREPETITION INSTITUTIONAL LENDERS TO THE DEBTOR:

4 DAVID A. HICKERSON
5 PETER M. FRIEDMAN
6 WEIL, GOTSHAL & MANGES, LLP
7 1501 K Street, N.W.
8 Suite 100
9 Washington, D.C. 20005
10 (202)682-7195

11 FOR DEBTORS:

12 MARY BETH HOGAN
13 DEBEVOISE & PLIMPTON, LLP
14 919 Third Avenue
15 New York, NY 10022
16 (212)909-6996

17 FOR OFFICIAL COMMITTEE FOR ASBESTOS CLAIMANTS:

18 TREVOR W. SWETT
19 MAX C. HEERMAN
20 CAPLIN & DRYSDALE
21 One Thomas Circle, NW
22 Suite 1100
23 Washington, D.C. 20005
24 (202)862-5000

25 FOR FUTURE CLAIMANTS REPRESENTATIVE:

MARIS VEIDEMANIS
KAYE SCHOLER, LLP
425 Park Avenue
New York, New York 10022-3598
(212)836-8623

FOR BONDS AND TRADES:

JONATHAN B. KROMBERG
ANDERSON KILL & OLICK, PC
1251 Avenue of the Americas
New York, New York 10020
212:278-1261

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ALSO PRESENT: HORACIO X. SANTOS - VIDEOGRAPHER

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1 A. Okay. Do you promise?

2 That was my sense. It was not
3 necessarily a scientific measurement that I could
4 produce you a document for but that was my gestalt,
5 when I say compensable disease, I meant under the
6 strict terms under the NSP agreements. May not be the
7 tort system or some other setting but in the NSP
8 agreements, I think that that was a fairly accurate
9 overview based on the things you and I visited
10 together.

11 Q. So it's your view that some two-thirds of the
12 nonmalignant claims submitted under the NSP should not
13 have been paid?

14 MS. HOGAN: Object to form.
15 Mischaracterizes testimony.

16 MR. SWETT: Objection to form.

17 Q. (BY MR. HICKERSON) Would you agree with that
18 statement?

19 A. The determination whether claims should be
20 paid or not was never in my purview. It's whether
21 they met medical criteria and should they be paid
22 based on what I viewed as medical criteria.

23 Q. Taking that qualification, is it your opinion
24 that two-thirds of the nonmalignant claims submitted
25 under the NSP did not meet medical criteria for

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1 payment under the NSP agreement?

2 MS. HOGAN: Object to form.

3 MR. SWETT: Same objection.

4 A. Again, I think within the context of the
5 cases I reviewed prior to the preparation of this
6 document, that was my view, yes, sir.

7 Q. (BY MR. HICKERSON) Okay.

8 A. Based on medical criteria under the NSP
9 agreement.

10 Q. Yes. Thank you. The next sentence it says,
11 80 percent of the nonmalignant claims submitted would
12 not qualify as impaired under the terms of the
13 agreement. Was this the topic that you later did the
14 report that we just went through in some detail?

15 A. The 1,691?

16 Q. Yes.

17 A. Yes, it is -- it was to focus on those -- on
18 the impaired claims, yes, sir.

19 Q. And so the first sentence here is not limited
20 to impaired claims; is that right? Your opinion that
21 at least 66 percent of the nonmalignant claims
22 submitted do not represent compensable disease.

23 MS. HOGAN: Objection to form.

24 MR. SWETT: Objection.

25 A. That --

1 MR. HICKERSON: I will accept one
2 objection as being applicable to everyone preserving
3 objections for everyone.

4 MS. HOGAN: We can't talk to each other.
5 I don't know if he's going to object, so.

6 MR. HICKERSON: Once we've heard one,
7 it's good for everyone in the room.

8 MR. SWETT: Fair.

9 A. Again, this is prior to preparation of the
10 large study and the 66 percent would have been all
11 inclusive, impaired, unimpaired, et cetera. The other
12 number relates only to impaired. When I say the other
13 number, 80 percent only to impaired.

14 Q. (BY MR. HICKERSON) Okay. And since you
15 didn't have -- you hadn't conducted the 1,691 study
16 yet when you wrote this?

17 A. That's correct.

18 Q. What was your opinion that 80 percent of the
19 nonmalignant claims submitted would not qualify as
20 impaired under the term of the agreements based upon?

21 A. It was based upon the three things I listed
22 here. My own experience as to what percent of
23 patients are impaired who actually have an
24 asbestos-related disease that might fulfill these
25 unique criteria for the NSP. Number two, litigation

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1 They varied based upon the x-ray finding of the
2 claimant, and they were predicated upon the finding of
3 abnormal lung function testing.

4 Q. Is it fair to say those were criteria
5 applicable as a matter of contract under the NSP as
6 distinct in criteria applicable in the tort system as
7 a matter of law?

8 A. It's my understanding that -- again, I'm not
9 a lawyer so when we talk about contract -- but it's my
10 understanding these were agreements that were reached
11 between the various -- each plaintiff firm and the
12 Owens-Corning within the NSP, so I would assume that
13 would be contractual, and certainly they are different
14 from the criteria that are customarily used when I
15 testify in a court of law, and we are using ATS
16 impairment criteria or American Medical Association
17 guideline to impairment. These criteria were unique
18 to the NSP.

19 Q. Were they stricter than the ATS or tort
20 system criteria you experienced in the sense that the
21 NSP impairment criteria excluded more clients?

22 MR. HICKERSON: Object to the form of the
23 question.

24 A. They are stricter to the sense that --
25 several things. Number one is that the AMA guide to

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1 impairment and the American Thoracic Society guide to
2 impairment, all other impairment guides only address
3 the issue of impairment, meaning how well do the lungs
4 function or do they function from -- or properly
5 stated, is there capacity in functioning capacity
6 below a certain normal value.

7 The NSP criteria goes that far and goes a
8 step farther and addresses the issue of causation
9 indirectly by disqualifying patients whose lung
10 impairment might be due to other causes such as
11 cigarette smoking because of the fact that an abnormal
12 lung test by itself doesn't make the diagnosis.

13 And within the NSP, the Owens-Corning did
14 not want to be penalized and paying money for people
15 whose lungs were injured from smoking, and so they put
16 certain other parameters that also had to be achieved
17 into the agreement for each of the patients.

18 Q. And outside of the NSP, in your experience as
19 an expert testifying in litigation, did you often see
20 it happen that a claimant proceeding on the basis of a
21 diagnosis of asbestosis who was a smoker and who could
22 not have met the impairment criteria on the NSP on the
23 account of smoking would nonetheless be eligible in
24 the tort system?

25 A. I've seen many cases where roughly 70 or 80

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1 percent of insulators were smokers, a lot of blue
2 collar workers were smokers, and they -- that did not
3 preclude them from filing a claim in the tort system,
4 that's correct.

5 Q. Now, is it fair to say that pages 3 and 4 of
6 your report, which is Exhibit 6, set forth the general
7 summary of the criteria of the NSP as you understood
8 them? I should say the criteria for determining
9 nonmalignant impaired cases.

10 A. That's correct in the broadest sense. The
11 actual criteria would be contained in the Appendix A
12 and Appendix B, which is attached to my report.

13 Q. Apart from the issue of smoking, can you
14 think of other ways in which the criteria generally
15 applicable under the NSP were more restrictive than
16 the criteria that would apply in the tort system in
17 the sense of ruling out more claims?

18 MR. HICKERSON: Object to the form of the
19 question.

20 A. The -- in functional impairment within the
21 NSP also is predicated in part on patient age so there
22 was a sliding scale which would have been unique to
23 the NSP but different from the tort system as far as
24 how lung function had to correlate with age. Also,
25 the fact that the -- there were certain x-ray criteria

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1 that were more stringent such as for pleural disease,
2 the NSP then would have been applicable in the tort
3 system.

4 Q. (BY MR. SWETT) In the tort system, is a
5 claimant required to show a PFT revealing reduced lung
6 function in order to be eligible for compensation?

7 MR. HICKERSON: Object to the form of the
8 question.

9 A. Could you repeat that for me, please?

10 Q. (BY MR. HICKERSON) In your experience in the
11 tort system is it a prerequisite for compensation that
12 a claimant for nonmalignant asbestos-related disease
13 present a pulmonary function test revealing reduced
14 lung function?

15 MR. HICKERSON: Object to the form of the
16 question.

17 A. I think I understand your question.

18 Q. (BY MR. SWETT) Okay.

19 A. Let me repeat and see if this is what you
20 intend.

21 Q. Okay.

22 A. I guess what you're asking is, in the
23 simplest term can a -- in the tort system can a person
24 file a claim for asbestosis or pleural disease either
25 without performing a PFT or without having an abnormal

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1 PFT, would that --

2 Q. Not only file but receive compensation on
3 such a claim.

4 A. It could, yes.

5 Q. As a medical matter, is a pulmonary function
6 test revealing essential to a diagnosis of asbestosis?

7 A. It is certainly helpful in strengthening the
8 diagnosis. It is not essential. The 1986 American
9 Thoracic Society criteria document says that you can
10 have asbestosis without impairment, although certainly
11 it's an important piece of information but it's not
12 required to make the diagnosis.

13 Q. Doctor, in your experience in the tort
14 system, has it sometimes happened that you've
15 testified in behalf of a claimant alleging
16 nonmalignant asbestos disease, and specifically
17 asbestosis, based on an x-ray with an ILO reading of 1
18 over 0?

19 A. I have testified in cases that after a
20 thorough evaluation, exclusion of more probable cause
21 that had a 1 over 0, I testified for the plaintiff,
22 that is correct.

23 Q. And have many of those plaintiffs succeeded
24 in winning compensation?

25 A. Yes, sir.

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1 Q. In many of those cases, did the defense
2 contest the presence of any disease?

3 A. Yes.

4 Q. Do you draw a distinction in your own mind,
5 Dr. Friedman, between impairment on the one hand and
6 injury on the other?

7 A. I think that there is -- using the American
8 Medical Association guide to impairment and in other
9 formats that I've -- where I've worked -- done work
10 Texas workers' Comp or Texas Rehab Commission, I
11 believe there are distinctions between injury and
12 impairment, yes.

13 Q. How would you describe those distinctions?

14 A. I believe the definition of injury might be
15 an alteration of a bodily part or alteration in
16 function made by injury. Whereas impairment indicates
17 the loss of use or loss of function. So that injury
18 can be an anatomic diagnosis, but impairment is the
19 loss of function.

20 Q. Do you also draw a distinction between
21 impairment on the one hand and disability on the
22 other?

23 A. Yes.

24 Q. What distinction is that?

25 A. Again, going to the American Medical

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1 viewed as significant questions in my mind concerning
2 how their interpretations compare to the peer review
3 literature or to the other B Readers, which to me
4 raises some questions especially when combined with
5 the fact some of these individuals were also
6 identified later in the Gitlin study which at the time
7 was unknown to me.

8 Q. What was the total number of B Readers
9 involved in the 1,691 claims for which you reviewed
10 records?

11 A. I believe that the total number of B Readers,
12 pulmonologists, radiologists was approximately 48, so
13 I believe there were 43 doctors in addition to the
14 five who were identified.

15 Q. With respect to those 43, you did not
16 identify any systemic problem; is that so?

17 A. Correct. To the contrary, they as a group --
18 there may be some individual variations. As a group
19 they seemed far more in keeping with what you expect
20 from the peer review literature and also were a very
21 useful barometer as they also had been hired by
22 plaintiff's counsel to demonstrate the difference
23 between the way their x-rays compared with the
24 literature and with these five of the more prolific
25 readers. So they were the other 90 percent of the

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1 A. These are cases that predominantly have not
2 been filed. These are cases that are people who have
3 had an x-ray, might have had a positive x-ray reading
4 by somebody but who have not been given a clinical
5 diagnosis of a disease and our experience is 85
6 percent of the time we have told plaintiff's law firms
7 they do not have a case or it may be that we're
8 looking at the x-ray for the first time and tell them
9 it's negative. But we have literally tens of
10 thousands of cases that we have told plaintiff firms
11 do not have a case based on our review of the x-rays,
12 our review of the patient.

13 Q. Dr. Friedman, do you know -- do you know why
14 Owens-Corning chose to send you certain claims NSP
15 claims for your review?

16 A. The answer -- the short answer to your
17 question is no, I do not know. That was their choice.
18 My -- my guess is that the claims they sent me were
19 largely problematic. They -- as you can see they kept
20 me very busy during the time I was working with them
21 and I know whenever I would come up to Granville, they
22 would ahead of time pull cases that were problematic
23 and the cases that were sent to me were usually the
24 cases they had serious question on. As to how they
25 chose those or why, you'd have to ask internally.

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1 Q. I think you testified earlier that you
2 reviewed around 3,000, maybe somewhat higher NSP
3 claims for medical purposes?

4 A. That's correct.

5 Q. Do you have any idea how many total NSP cases
6 there were?

7 A. I do not know. I know that the first time I
8 ever talked to anybody about possibly going to become
9 involved with the NSP, the number 200, 215,000 is when
10 I asked them what the magnitude of the problem was. I
11 remember my response to that. I think that
12 Owens-Corning owed me for a new pair of underwear
13 because that that was a large number and that was
14 overwhelming.

15 Q. You didn't look at all 200,000?

16 A. No, I said I only went up to 3 or 4,000 out
17 of that total.

18 Q. So which is about little over one percent?

19 A. That's correct.

20 Q. So the documents that Mr. Hickerson showed
21 you earlier today that dealt with prepetition
22 prebankruptcy reports on various NSP claims that you
23 reviewed, those reports and the conclusions you
24 reached in those reports apply to about one percent of
25 the total NSP claims?

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1 MR. HICKERSON: I'll object to the form
2 of the question.

3 Q. (BY MS. HOGAN) You can go ahead and answer.

4 A. They applied to what I reviewed, whether they
5 can be extrapolated beyond that, I'm not going to say
6 yes or no because I have not looked at the universe of
7 the claims so I don't know. I think that they are
8 fair representations of what we looked at.

9 Q. Of the one or one and a half percent of the
10 claims you looked at.

11 MR. HICKERSON: Object to the form of the
12 question.

13 A. Plus the additional 1,961 claims in the
14 bankruptcy. I think that they accurately reflect what
15 we found there. Now, beyond that I would be
16 speculating.

17 Q. (BY MS. HOGAN) In Exhibit 101, this was a
18 letter from Jeff -- from you to Jeffrey Martincic at
19 Integrex about Odom and Elliott?

20 A. Yes.

21 Q. Do you recall that? And you were asked a
22 question I believe it was -- had to do with your
23 recommendation. One of your recommendations was that
24 an audit of the radiographs should be conducted,
25 Dr. Ballard's radiographs should be conducted. Do you